

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.12.3013 relating to))	AMENDMENT
the seed civil penalties matrix)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On January 20, 2007, the Montana Department of Agriculture proposes to amend the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. January 4, 2007, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

4.12.3013 CIVIL PENALTIES - MATRIX

<u>Type of Violation</u>	1st Offense	2nd Offense	Subsequent Offenses
(1) through (5) remain the same.			
(a) authority of the owner; and	\$200 <u>1000</u>	\$500 <u>1000</u>	\$1000
(b) the required seed certification.	\$200 <u>1000</u>	\$500 <u>1000</u>	\$1000
(6) through (16) remain the same.			

AUTH: 80-5-139, MCA

IMP: 80-5-136, MCA

REASON: New seed variety development requires a substantial investment, which is recovered through strategic pricing of the new seed varieties. Companies that breed and develop seed varieties, including the Montana State University, own varieties protected under the Plant Variety Protection Act (PVPA). The Montana Seed Act provides necessary protection of new seed varieties and makes it a violation of the Montana Seed Act to sell or transport protected varieties without the permission of the owner. Montana's seed industry believes that these types of violations are occurring and that the current civil penalties are not sufficient to deter

these violations. The department concurs that increasing the civil penalties may deter violations.

Based on the past five years, increasing these civil penalty amounts will not have a significant economic impact on the industry or the department. In the past five years, the department has investigated six claims of Plant Variety Protection Act violations with no civil penalties assessed. Obviously, if a violation is proven, the penalty would be increased by 500 percent for the first offense and 200 percent for the second offense. The department does not foresee an increase in civil penalties assessed without a coordinated effort from variety owners and the seed industry in providing documentation of alleged violations.

While there is potential for an increase in revenue based on the increased civil penalty fees, in the past five years, we have not assessed a penalty; therefore, we anticipate no financial impact. Those potentially affected by this rule change include 316 licensed seed dealers, conditioners and seed growers in the state, and an unknown number of persons unauthorized to sell plant variety protected seed.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than January 18, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than January 18, 2007.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 32 persons based on 316 licensed seed dealers, conditioners, and growers in the state, and an unknown number of persons unauthorized to sell plant variety protected seed.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which

program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, December 11, 2006.